



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert R. Corbin

August 1, 1983

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ARIZONA ATTORNEY GENERAL

J. Elliott Hibbs, Director
Arizona Department of Revenue
1700 West Washington Street
Phoenix, Arizona 85007

Re: 183-089 (R82-185)

Dear Mr. Hibbs:

Last year an election held in Yuma County resulted in that county being divided into two counties, the newer one being called La Paz County. In light of this fact, you have asked our opinion as to the enforceability of existing tax liens recorded with the Yuma County Recorder for property that is located in the new La Paz County. You specifically have asked whether these liens must be re-recorded in La Paz County.

A.R.S. § 42-1821 grants to the Department of Revenue a lien "upon all property and rights to property" of a taxpayer who has failed to pay his taxes when due. A.R.S. § 42-1822 sets forth the procedures by which the Department's liens may be perfected. That statute reads in pertinent part:

A. The lien imposed by § 42-1821 may be perfected by the Department against the taxpayer's real property located in any county by recording a notice of lien in the form prescribed by subsection D of the section in the office of the county recorder.

Although there is no Arizona law specifically on point, it has long been recognized by the courts that once a conveyance or a judgment lien has been registered or recorded in the proper county, a subsequent change of a county's boundary will not affect such conveyance or judgment lien, and no additional registry or recordation in the new county will be necessary. Koerper v. St. Paul, etc. R. Co., 40 Minn. 132, 41 N.W. 656 (1889); Davidson v. Root, 11 Ohio 98 (1841).

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In Davidson, supra, where the question of re-recording was also considered, the court reasoned:

There is no difference, in our opinion, in principle, between this judgment lien and a lien created by mortgage, recorded in Huron County before the division. The record of Erie would have given no notice of the fact at the date of this purchase by the respondent. The law requires all instruments by which lands are encumbered to be recorded in the county where the land lies; but it has never been supposed that liens, created by such instruments, became inoperative, because the land encumbered, by a subsequent division, fell into a different county than that in which such instruments were recorded. Nor has a new record, in such case, been considered necessary to protect the grantee against subsequent purchasers without notice . . . 11 Ohio at 100-101.

Moreover, the Supreme Court of Oklahoma in C.M. Keys & Co. v. First National Bank, 22 Okla. 174, 104 P. 346 (1908) reh. (1909), held that the recordation of mortgages at issue were valid if properly done under the terms of the law in force at the time. Since no provision was made for re-recording such instruments, the court stated:

Where the deed is deposited for record in the office of the recorder of the county in which the land is located at the time, and by a subsequent division the land falls within the boundaries of another county, such change will not affect the validity of the registration. [Citations omitted] The record of a deed in a county where the land lies, though upon subdivision of the county subsequent to the record of the deed the land may fall within the new subdivision is notice to purchasers. 104 P. at 349

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Based upon the foregoing case decisions, it is our opinion that no additional recording is necessary in La Paz County for property tax liens previously filed in Yuma County.

Sincerely,

Bob Corbin

BOB CORBIN
Attorney General

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